




The operative complaint continues to be the First Amended Complaint filed April 4, 2025, which continues to go unanswered and undefended despite service upon the defendants. Under Rule 55(a), the clerk must enter default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise[.]” That plaintiffs have not requested entry of default makes no difference. *See Peterson v. Syracuse Police Dep’t*, 467 Fed. App’x 31, 33 (2d Cir. 2012) (“The plain language of Rule 55(a) . . . does not mandate that a default be entered only upon plaintiff’s request but rather implies that however a district court ultimately becomes aware of a party’s default, the clerk must enter default.”). *See also McCuller v. City of Rochester*, No. 21-CV-6763-FPG-MJP, 2024 WL 3287220, at \*2 (W.D.N.Y. July 3, 2024); *Hill v. CACH, LLC*, No. 6:17-CV-06102-MAT, 2017 WL 3705499, at \*3 (W.D.N.Y. Aug. 28, 2017) (citing cases). Although I disapprove of the parties’ apparent agreement to disregard the Federal Rules of Civil Procedure, I nevertheless find that defendants have shown sufficient cause to avoid entry of default at this time.

Nearly three months have passed since plaintiffs represented to defendants that they intended to file a Second Amended Complaint, with that representation appearing to have lulled defendants into not answering the First Amended Complaint. Consequently, as stated above, the case is at a standstill. I will

therefore direct plaintiffs to file within ten (10) days a motion for leave to file a Second Amended Complaint under Federal Rule of Civil Procedure 15 that complies in all respects with Local Rule 4.07. Failure to timely file a motion for leave pursuant to this Order will result in the First Amended Complaint remaining as the operative complaint in the case, which defendants will be required to answer or defend or face entry of default.

Accordingly,

**IT IS HEREBY ORDERED** that within ten (10) days of the date of this Memorandum and Order, plaintiffs shall file a motion for leave to file a Second Amended Complaint in the manner prescribed by the appropriate federal and local rules. In the event plaintiffs do not timely file an appropriate motion for leave to file a Second Amended Complaint, this case will proceed on the First Amended Complaint filed April 4, 2025.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 7th day of July, 2025.